

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

Carlos Jose Pagan,

Plaintiff,

vs.

United States of America, Dan L. Dove,

R. Tyrone Allen, S.A. Yates, R. Tim

Gravette, Robert Bob McClafferty,

Kahle Vinning, John Redman,

John Clark, Juan Carmona, Shelton

Flournot, Brad Munson, Felander Turner,

William Reese, Kevin Peay, Andrew

Crawford, and Osmond Brinson,

Defendants

C.A. No.: 3:03-2903-MBS

**OPINION AND ORDER**

Plaintiff Carlos Jose Pagan is a federal inmate in custody of the Bureau of Prisons. At the time of the underlying allegations he was housed at the Federal Correctional Institution in Edgefield, South Carolina. Plaintiff brings this action alleging Defendants violated his rights under the Eighth Amendment because they failed to protect him from an attack by other inmates on December 9, 2001. See Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388, 397 (1971). He also asserts a claim under the Federal Tort Claims Act, 28 U.S.C. §§ 2671 et seq.

On September 30, 2004, Defendants filed a motion for summary judgment. By order filed October 4, 2004, pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), Plaintiff was advised of the summary judgment procedure and the possible consequences if he failed to respond adequately. Plaintiff filed a response on November 3, 2004, as well as an additional response on April 27, 2005.

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Joseph R. McCrorey for pretrial handling. The Magistrate Judge filed a Report and Recommendation on June 14, 2005 in which he recommended that Defendants' motion for summary judgment be granted. Plaintiff filed no objections to the Report and Recommendation.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. See Mathews v. Weber, 423 U.S. 261, 270-71 (1976). The court is charged with making a de novo determination of those portions of the Report and Recommendation to which specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. See 28 U.S.C. § 636(b)(1). In the absence of objections to the Report and Recommendation, the court is not required to give any explanation for adopting the recommendation. See Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983).

After a thorough review of the Report and Recommendation and the record in this case, the court adopts the Magistrate Judge's Report and Recommendation and incorporates it herein. For the reasons stated, Defendants' motion for summary judgment is **granted**.

**IT IS SO ORDERED.**

/s/ Margaret B. Seymour  
United States District Judge

Columbia, South Carolina  
August 2, 2005

**NOTICE OF RIGHT TO APPEAL**

Plaintiff is hereby notified that he has the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.